

FILED

JUL 30 2003


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JAMES G. ABOUREZK,)
vs.)
Plaintiff,) Civ. No. 03-4146
PROBUSH.COM, INC., a Pennsylvania)
corporation; and MICHAEL MARINO, an)
individual,)
Defendants.)

COMES NOW Defendant ProBush.com, by and through its counsel of record, and does hereby respectfully move to dismiss the Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). This motion is made on the following bases:

1. The complaint fails to state a claim upon which relief can be granted, as the Plaintiff's claim is precluded by the First and Fourteenth Amendments to the United States Constitution.

This motion is supported by an accompanying brief, hereby incorporated by reference, as well as the Affidavit of Michael Marino, filed in his capacity as President of ProBush.com, Inc., with attached exhibits.

WHEREFORE, Defendant ProBush.com respectfully requests that this Honorable Court grant its Motion to Dismiss.

Dated this 30th day of July, 2003.

**JOHNSON, HEIDEPRIEM, MINER,
MARLOW & JANKLOW, L.L.P.**

By Ronald A. Parsons

Ronald A. Parsons, Jr.

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Attorneys for Defendant ProBush.com, Inc.

REQUEST FOR ORAL ARGUMENT

Pursuant to D.S.D. Local Rule 7.1, Defendant ProBush.com, Inc. respectfully requests oral argument on this motion.

Ronald A. Parsons

Ronald A. Parsons, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **Defendant ProBush.com, Inc.'s Rule 12(b)(6) Motion to Dismiss and Request for Oral Argument** was on this day sent via first class mail, postage prepaid, to the following:

Todd D. Epp
Of Counsel
Abourezk Law Offices, P.C.
P.O. Box 1164
Sioux Falls, SD 57101-1164

Attorneys for the Plaintiff

Dated this 30th day of July, 2003.



Ronald A. Parsons, Jr.